

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JESSE RODRIGUEZ,

Petitioner,

-v-

JAMES CONWAY, Superintendent, Attica  
Correctional Facility,

Respondent.  
----- x

07 Civ. 9863 (JSR)

ORDER

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>9-28-09</u>
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JED S. RAKOFF, U.S.D.J.

On March 13, 2009, the Honorable Andrew J. Peck, United States Magistrate Judge, issued a typically excellent Report and Recommendation ("Report") in the above-captioned matter recommending that the Court deny the petitioner's petition brought pursuant to 28 U.S.C. § 2254 to vacate his sentence based upon claims of wrongful preclusion of psychiatric testimony by the trial court, ineffective assistance of counsel, invalidity of his guilty plea on the basis that it was made unknowingly and involuntarily, and error by the sentencing court for denying his request for substitution of counsel.

Neither party has filed any objection to the Report, and, for that reason alone, the parties have waived any right to further appellate review. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002); Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir. 2000). Accordingly, the Court hereby adopts the Report and Recommendation and, for the reasons therein, dismisses the petition with prejudice.

In addition, since the petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of

appealability will not issue. See 28 U.S.C. § 2253(c)(2).

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Order would not be taken in good faith.

The Clerk of the Court is directed to enter final judgment dismissing the petition with prejudice.

SO ORDERED.

  
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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
September 27, 2009